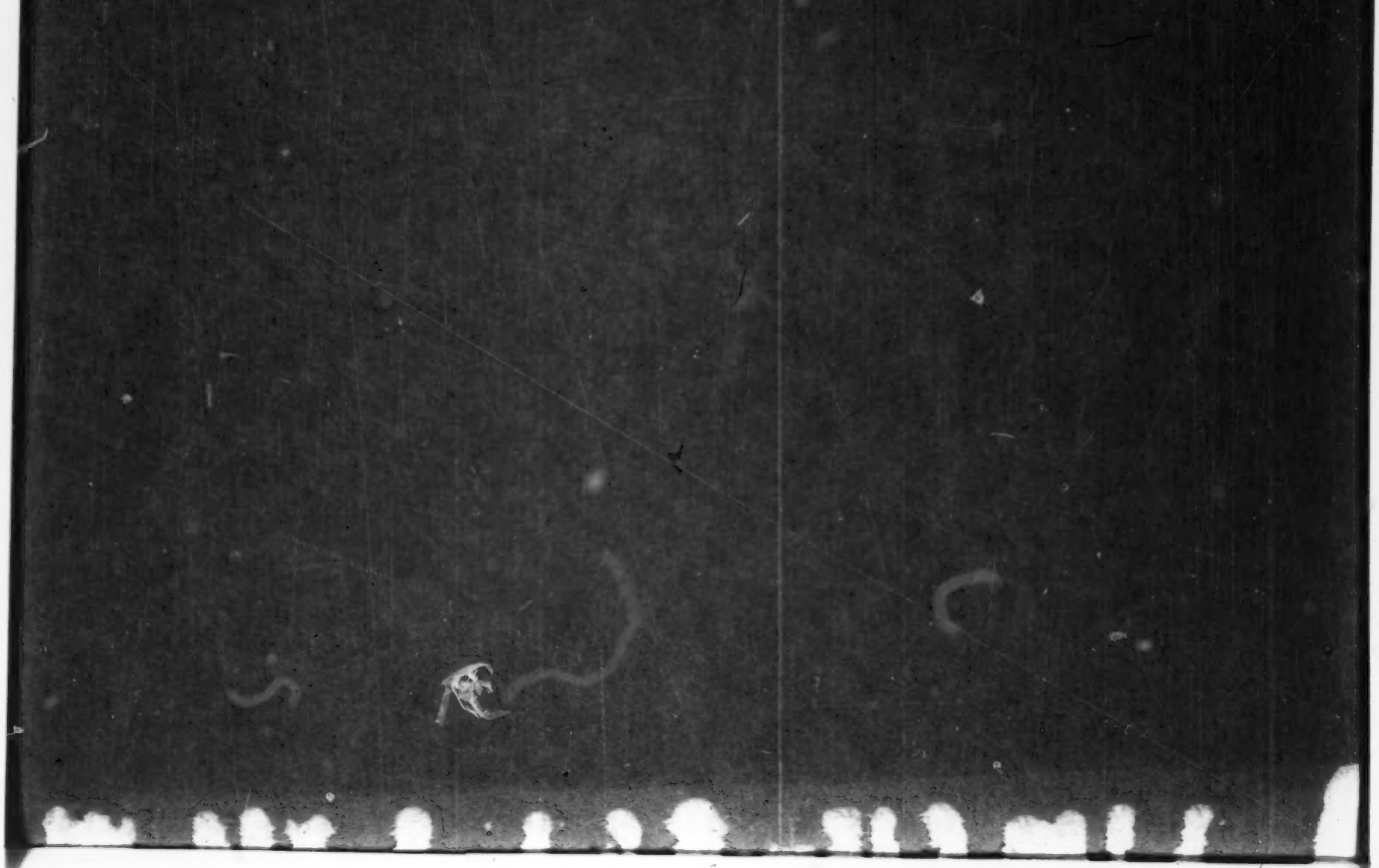

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IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 28202

RICHARD L. GRAY,

Plaintiff-Appellant,

versus

GULF, MOBILE & OHIO RAILROAD COMPANY, a corporation, ET AL,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Alabama

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(July 13, 1970)

Before TUTTLE, WISDOM and GOLDBERG, Circuit Judges.

GOLDBERG, Circuit Judge: We are called upon to resolve a clash between enforced union adherence and an individual conscience which forswears union allegiance. Plaintiff Richard L. Gray, whose religious convictions compel him to reject all forms of union affiliation, seeks to invoke the First Amendment as a pro-

tective shield against compulsory unionism sanctioned by the Railway Labor Act. The constitutional issue is sensitive and perhaps far-reaching, but our resolution of the issue is guided by previous Supreme Court teachings. Because we conclude that the court below was correct in its application of these teachings, we uphold the court's denial of relief.

The relevant facts are not disputed.[1] In February, 1967, plaintiff Gray began working as a machinist with the defendant railroad.[2] Previously the defendant railroad and the defendant union had entered into a union shop agreement pursuant to the provisions of § 2, Eleventh of the Railway Labor Act.[3] Section 2,

[1]The facts are set out in greater detail in the opinion of the district court, which is published at 302 F.Supp. 292.

[2]In the interest of complete accuracy we note that Gray had previously worked as a machinist for the defendant railroad. *See* 302 F.Supp. at 293-94. We consider his prior employment history irrelevant, however, because the record indicates that in February, 1967, Gray was treated as a new employee.

[3]Section 2, Eleventh, 45 U.S.C.A. § 152, Eleventh, provides:
"Eleventh. Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall re-

quire such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First Division of paragraph (h) of section 153 of this title, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he

Eleventh permits union shop agreements provided there is no discrimination against any employee with regard to membership requirements, and provided further that membership is not denied or terminated for any reason other than failure "to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership." Under the terms of the agreement here involved Gray was required to become a member of the union within the first sixty days of his employment. Gray refused to do so on the ground that his religious convictions forbade his joining or supporting a labor union.[4] In

holds membership: *Provided, however*, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further*, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended."

[4]Gray is a Seventh Day Adventist who interprets the teachings of his church as forbidding membership in or financial support of labor unions. At one point in the dismissal proceedings instituted against him because of his refusal to com-

ply with the union shop agreement, Gray submitted a statement explaining his religious beliefs to the arbitrator hearing his case. That statement included the following:

"I am not willing to pay any dues or fees to the Union, because it is against my religious convictions to do so. I have previously made this clear to the Company and to the Union.

"I am a member of the Seventh-Day Adventist Church. I am a devoted believer in the tenets and teachings of this Church, and I try to follow them conscientiously.

"My Church teaches that 'the remedy for social evils is not to be found in argument, controversy or strife' and that 'the remedy must be secured individually'—not through organization but by 'change of heart' and 'attitude' in each person."

In the same statement Gray quoted the following passages from "Seventh-Day Adventists and Labor Unions, by M. E. Loewen":

"The Scriptures teach that man is a free moral agent. Each individual must choose for himself whether he will serve God and how he will discharge his responsibilities to his God. (Deut. 30:15-20; Josh. 24:15). A Seventh-day Adventist should not join a group that will take the power of decision from him. There might be times when the action of the group as a whole would be contrary to the Christian principles he embraces.

* * *

"A Seventh-day Adventist cannot join in a conflict with any class, either capital or labor, and retain his power to draw men by the influence of the Holy Spirit. A Seventh-day Adventist would antagonize the working man if he should join forces against labor and he would be unable to witness for Christ before the employer if he aligns himself with those opposing management."

Also included in the record now before us is a letter signed by W. Melvin Adams, Associate Director, Department of Religious Liberty, General Conference of Seventh-Day Adventists. This letter, dated May 16, 1967, indicates that the

Seventh-Day Adventist position on labor unions is that every worker should decide for himself whether or not to join a union, but that every worker who decides not to join should be subject to no sanctions because of his decision. We quote from the letter:

"The following sets forth the position of the Seventh-day Adventist Church in the United States of America with reference to that body's relationship to labor unions, and the conviction of Seventh-day Adventist artisans and laboring men regarding membership in such organizations.

"Seventh-day Adventists are in sympathy with the basic objectives of organized labor—proper wages, proper hours, and proper working conditions. They believe that those laborers who are conscientiously free to do so are warranted in organizing to obtain such objectives.

"Seventh-day Adventists cherish as God's gift the principle of liberty of conscience as set forth in the Holy Scriptures, and recognized and acknowledged as inalienable by the government of the United States, both in the Declaration of Independence and in its Constitution. They not only treasure these liberties themselves, but concede them to all others.

"It is on the basis of these principles that they accord to every man the right to join, or not to join, a labor union. They believe, however, that no opposition should be raised against, and no penalties or disabilities applied to, those who choose not to belong to labor unions for reasons of conscience. This is fundamental in the application of the principles of civil and religious freedom referred to above.

"Those Seventh-day Adventists who do not join labor unions are led to take this course because of religious convictions. They feel themselves barred by conscience from membership in any industrial management organization or labor union which involves men of varying convictions being associated together in one organization and mutually required to adhere to policies, comply with decisions and abide by restrictions which may be contrary to individual conscience. No person can enjoy or exercise freedom of

lieu of union membership the union offered Gray an arrangement whereby he could pay the required dues and fees without actually becoming a member of the union, but Gray found even this proposed arrangement unacceptable.[5] In his own words, "I had become of the genuine and sincere conviction that to pay dues and fees to the union would violate my religious faith."[6] Because Gray's unwavering refusal to comply with the terms of the union shop agreement, dismissal

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conscience or religion when bound to a course he believes to be against conscience, or to be unscriptural.

"While Seventh-day Adventists sympathize with the worthy objectives of labor unions, it is well known that occasions arise when, failing to obtain these objectives through the peaceful processes of negotiation, mediation and arbitrations, measures of coercion are restored to, taking the form of boycotts, strikes, picketings, and similar methods of enforcing their demands. Being under the scriptural injunction, as Christians, that 'the servant of the Lord must not strive,' and that he is to 'do violence to no man,' Seventh-day Adventists believe sincerely they must stand apart from a relationship which requires participation in such procedures."

From these statements in the record we gather that there is no catechistical pronouncement directing all Seventh-Day Adventists to abstain from joining or supporting labor unions. At the same time, we have no reason to doubt that plaintiff Gray's understanding of the tenets of his church had led him to embrace the sincere religious conviction that it would be wrong for him to join or support a labor union.

[5]Gray did express his willingness to pay to a designated charity amounts equal to the required union fees and dues, but the union refused to accept such an arrangement.

[6]This statement is taken from an affidavit filed in the district court.

proceedings were instituted against him,[7] and at the conclusion of the proceedings the railroad had no alternative but to terminate his employment.

Having lost his job because of his religious convictions, Gray brought suit against the railroad and the union in the United States District Court for the Southern District of Alabama. In his complaint he contended that the termination of his employment was in violation of the First, Fifth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitution.[8] In his prayer for relief he sought (1) an order granting him reinstatement to his former position, (2) an injunction forbidding his discharge in the future for failure to pay union dues and fees so long as his refusal to do so was based on his religious convictions, and (3) an award of damages growing out of his loss of employment. The district court denied relief, and plaintiff has appealed. Finding ourselves in agreement with the opinion written by Judge Thomas in the court below, we affirm.

On appeal Gray hurls a two-fold argument at the statute. He contends initially that §2, Eleventh should not be interpreted to require a railroad employee to

[7]As the district court noted, the dismissal proceedings took place within the context of the "prescribed and detailed" procedures in the union shop agreement. 302 F.Supp. at 294. The record indicates that Gray received full and adequate consideration at every stage of the proceedings.

[8]The scope of plaintiff's constitutional argument has been narrowed on appeal; he now bases his argument primarily on the free exercise clause of the First Amendment.

pay union dues and fees pursuant to a union shop agreement if the employee objects to such payments on religious grounds. Alternatively, if the statute is so interpreted, he contends that it is unconstitutional.

We find the first branch of Gray's argument — the statutory construction contention — totally devoid of merit. Nothing in the statute exhibits a congressional intent that any employee in a union shop situation is to be totally exonerated from the requirement of paying union dues and fees. On the contrary, § 2, Eleventh specifically permits agreements requiring "all employees" to become members of the union representing their craft or class. Thus we conclude that plaintiff's only possible salvation is to be found in his constitutional argument.

In deciding the constitutional issue we are not required to navigate in unchartered waters. Instead we are guided firmly to our destination by two Supreme Court decisions, *Railway Employees' Department, AFL v. Hanson*, 1956, 351 U.S. 225, 76 S. Ct. 714, 100 L.Ed. 1112, and *International Association of Machinists v. Street*, 1961, 367 U.S. 740, 81 S.Ct. 1784, 6L.Ed. 2d 1141. These decisions were relied upon by Judge Thomas in the court below; they have been invoked by the parties on this appeal; and we agree that they are dispositive of the issue now before us.

The decisions in *Hanson* and *Street* can best be understood in light of the legislative history of § 2, Eleventh. That legislative history was discussed at

great length in the *Street* opinion. As the Court there noted, "the question of union security in the rail industry was first given detailed consideration by Congress in 1934."[9] At that time, for a variety of reasons,[10] Congress chose to adopt § 2, Fifth of the Railway Labor Act, specifically forbidding union shop agreements.[11]

> "The question of union security was reopened in 1950. Congress then evaluated the proposal for authorizing the union shop primarily in terms of its relationship to the financing of the unions' participation in the machinery created by the Railway Labor Act to achieve its goals. The framework for fostering voluntary adjustments between the carriers and their employees in the interest of the efficient discharge by the carriers of their important functions with minimum disruption from

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[9]367 U.S. at 751, 6 L.Ed. 2d at 1151.

[10]*See* 367 U.S. at 751-53, 6 L.Ed.2d at 1151-52; *cf. Hanson*, 351 U.S. at 231, 100 L.Ed. 1130.

[11]Section 2, Fifth, 45 U.S.C.A. § 152, Fifth, provides:

> "Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way."

This section's prohibition of union shop agreements was rendered ineffective in 1951 by the passage of § 2, Eleventh. *See* note 3 *supra*.

labor strife has no statutory parallel in our industry. That machinery, the product of a long legislative evolution, is more complex than that of any other industry.[12]

* * *

"[I]n prescribing collective bargaining as the method of settling railway disputes, in conferring upon the unions the status of exclusive representatives in the negotiation and administration of collective agreements, and in giving them representation on the statutory board to adjudicate grievances, Congress had given the unions a clearly defined and delineated role to play in effectuating the basic congressional policy of stabilizing labor relations in the industry. . . .

"Performance of these functions entails the expenditure of considerable funds. Moreover, this Court has held that under the statutory scheme, a union's status as exclusive bargaining representative carries with it the duty fairly and equitably to represent all employees of the craft or class, union and nonunion. [Citing cases.] The principal argument made by the unions in 1950 was based on their role in this regulatory framework. They maintained that because of the expense of performing their duties in the congressional scheme, fairness justified the spreading of the costs to all employees who benefited. They thus advanced as their purpose the elimination of the 'free riders' — those employees

[12]367 U.S. at 755, 6 L.Ed.2d at 1153 (footnote omitted).

who obtained the benefits of the unions' participation in the machinery of the Act without financially supporting the unions.[13]

* * *

"This argument was decisive with Congress. The House Committee Report traced the history of previous legislation in the industry and pointed out the duty of the union acting as exclusive bargaining representative to represent equally all members of the class. 'Under the act, the collective-bargaining representative is required to represent the entire membership of the craft or class, including nonunion members, fairly, equitably, and in good faith. Benefits resulting from collective bargaining may not be withheld from employees because they are not members of the union.' HR Rep No. 2811, 81st Cong, 2d Sess, p. 4. Observing that about 75% or 80% of all railroad employees were believed to belong to a union, the report continued: 'Nonunion members, nevertheless, share in the benefits derived from collective agreements negotiated by the railway labor unions but bear no share of the cost of obtaining such benefits.' Ibid. These considerations overbore the arguments in favor of the earlier policy of complete individual freedom of choice."[14]

Consequently, in 1951 Congress sanctioned union shop agreements in the rail industry by adopting § 2,

[13] 367 U.S. at 760-61, 6 L.Ed.2d at 1156-57.

[14] 367 U.S. at 762-63, 6 L.Ed.2d at 1157-58 (footnote omitted).

Eleventh. In doing so Congress "contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes."[15]

The constitutionality of § 2, Eleventh was soon under attack in the courts. In *Hanson* a group of railroad employees who sought to avoid union membership argued that their First and Fifth Amendment rights were invaded by the compulsions of a union shop agreement sanctioned by § 2, Eleventh. The Supreme Court disagreed. Finding the statutory sanction of union shop agreements a reasonable exercise of congressional power under the Commerce Clause,[16] the Court explained its rejection of the constitutional objections and delineated the scope of its holding in these words:

"Wide-ranged problems are tendered under the First Amendment. It is argued that the union shop agreement forces men into ideological and political associations which violate their right to freedom of conscience, freedom of association, and freedom of thought protected by the Bill of Rights. It is said that once a man becomes a member of these unions he is subject to vast disciplinary control and that by force of the federal Act unions now can make him conform to their ideology.

[15]367 U.S. at 764, 6 L.Ed.2d at 1158.

[16]351 U.S. at 233-35, 100 L.Ed at 1131-32.

". . . It is argued that compulsory membership will be used to impair freedom of expression. But that problem is not presented by this record. Congress endeavored to safeguard against that possibility by making explicit that no conditions to membership may be imposed except as respects 'periodic dues, initiation fees and assessments.' If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case. For we pass narrowly on § 2, Eleventh of the Railway Labor Act. We only hold that *the requirement for financial support of the collective bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments.*" 351 U.S. at 236-38, 100 L. Ed. at 1132-34 (emphasis added, footnotes omitted).

In *Street* the Court faced a different attack on the statute. The plaintiffs in *Street* were railroad employees who complained that portions of the union dues which they paid were used for *political* purposes antithetical to their beliefs rather than for collective bargaining purposes. The Court found that such expenditures were not sanctioned by the statute, holding that § 2, Eleventh "is to be construed to deny the unions, over an employee's objections, the power to

use his exacted funds to support political causes which he opposes." 367 U.S. at 768-69, 6 L.Ed.2d at 1161. The Court remanded for a determination of the proper remedy to protect each employee's rights,[17] but in doing so the Court never suggested that an employee could be permitted to completely cease his financial contributions to the union. In fact, the Court specifically reaffirmed the constitutional validity of compulsory exaction of union dues under union shop agreements:

[17]The Court suggested two possible remedies:

"One remedy would be an injunction against expenditure for political causes opposed by each complaining employee of a sum, from those moneys to be spent by the union for political purposes, which is so much of the moneys exacted from him as is the proportion of the union's total expenditures made for such political activities to the union's total budget. The union should not be in a position to make up such sum from money paid by the nondissenter, for this would shift a disproportionate share of the costs of collective bargaining to the dissenter and have the same effect of applying his money to support such political activities. A second remedy would be restitution to each individual employee of that portion of his money which the union expended, despite his notification, for the political causes to which he had advised the union he was opposed. There should be no necessity, however, for the employee to trace his money up to and including its expenditure; if the money goes into general funds and no separate accounts of receipts and expenditures of the funds of individual employees are maintained, the portion of his money the employee would be entitled to recover would be in the same proportion that the expenditures for political purposes which he had advised the union he disapproved bore to the total union budget." 367 U.S. at 774-75, 6 L.Ed.2d at 1164-65. *See also* Brotherhood of Railway and Steamship Clerks v. Allen, 1963, 373 U.S. 113, 83 S.Ct. 1158, 10 L.Ed.2d 235.

"[T]he union-shop agreement itself is not unlawful [Citing *Hanson.*] The appellees therefore remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement. Their right of action stems not from constitutional limitations on Congress' power to authorize the union shop, but from § 2, Eleventh itself. In other words, appellees' grievance stems from the spending of their funds for purposes not authorized by the Act in the face of their objection, not from the enforcement of the union-shop agreement by the mere collection of funds. If their money were used for purposes contemplated by § 2, Eleventh, the appellees would have no grievance at all." 367 U.S. at 771, 6 L.Ed. 2d at 1162.

Thus *Street* left unimpaired the imprimatur of constitutionality which had been placed on § 2, Eleventh by *Hanson*. Only the *expenditure* of union funds *for non-collective bargaining purposes* was interdicted by the Court's statutory construction in *Street*.[18]

In the present case plaintiff does not contend that any portion of the financial contributions demanded by the union would have been used for non-collective bargaining purposes. Instead, he takes the position that "being a member of a union or financially supporting a union, in itself, is objectionable to his prin-

[18]For a subsequent application of the *Street* holding see Brotherhood of Railway and Steamship Clerks v. Allen, 1963, 373 U.S. 113, 83 S.Ct. 1158, 10 L.Ed.2d 235.

ciples." 302 F.Supp. at 295. He argues that § 2, Eleventh, as applied to an employee with his religious convictions, is unconstitutional. We cannot agree.

In both *Hanson* and *Street* the Supreme Court upheld the power of Congress to enact a law permitting union shop contracts in the railroad industry. The primary justification for such an enactment is the policy that all who benefit from the collective bargaining activities of a railroad union should help to bear the cost of such activities. Thus viewed, the union dues exacted from all employees as a condition of employment under union shop agreements simply constitute a "tax" in support of the collective bargaining efforts of the union. In this regard we note that plaintiff Gray has never been asked to subscribe to any tenets or doctrines of unionism. He has merely been requested to pay his share of the cost of collective bargaining under the union shop agreement. Congress has clearly authorized such union shop agreements, and the Supreme Court has instructed us that such an arrangement does not violate the First Amendment. This being true, we cannot grant plaintiff's request that he be freed from the compulsions of the union shop agreement.

Nor do we consider this a harsh or unjust result. As Judge Thomas observed below, "[p]laintiff's religious scruples are not the first which [have] had to yield to the general applicability of a statute." 302 F.Supp. at 296. The First Amendment commands us

to be vigilant in protecting the free exercise of religion, but religious conscience cannot be a superordinating factor in every situation. The hand of government is not to be stayed where a compelling governmental interest outweighs the infringement upon First Amendment rights. The Supreme Court has repeatedly taught us that the First Amendment's protection of religious conscience is not absolute when a religious opinion is translated into an act or a refusal to act. Although the Court refused to sanction a state statute compelling a salute to the flag where religious conscience said "nay," *West Virginia State Board of Education v. Barnette*, 1943, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628, the Court did uphold compulsory vaccination requirements even when they offended religious conscience, *Jacobson v. Massachusetts*, 1905, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643. Although the Court refused to sanction a state's denial of unemployment compensation to sabbatarians who resfused all Saturday employment, *Sherbert v. Verner*, 1963, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965, the Court did uphold Sunday closing laws which were applied to sabbatarians despite their claims that such laws interfered with the free exercise of their religion, *Braunfeld v. Brown*, 1961, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563. Long ago the Court held a statute forbidding polygamy constitutional even when applied to Mormons who had a genuine and sincere conviction that polygamy was a practice commended by God. *Reynolds v. United States*, 1879, 98

U.S. 145, 25 L.Ed. 244. We do not doubt that plaintiff Gray has a genuine and sincere religious conviction that his financial support of a labor union would be wrong, but it is simply not possible in an ordered society to allow every aspect of religious belief to stay the hand of government under the aegis of the First Amendment.

The judgment of the district court is AFFIRMED.

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1969

No. 28202

D. C. Docket No. CA 5288-68-T

RICHARD T. GRAY

Plaintiff-Appellant,

versus

GULF, MOBILE & OHIO RAILROAD COMPANY, a corporation, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Alabama

Before TUTTLE, WISDOM and GOLDBERG, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

July 13, 1970

Issued as Mandate: Aug. 4, 1970.

IN THE

United States District Court

FOR THE

SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

RICHARD L. GRAY,
Plaintiff,

v.

GULF, MOBILE & OHIO RAILROAD COMPANY, a corporation, and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,
Defendants.

CIVIL ACTION No. 5288-68-T

This matter comes before the Court on the defendant's motion to dismiss, or alternatively, motion for summary judgment. There is no genuine dispute as to any material fact and the cause is properly before the Court for summary judgment. The facts are as follows:

On March 1, 1953, defendant Gulf, Mobile & Ohio Railroad Company, hereinafter referred to as GM&O and defendant International Association of Machin-

ists and Aerospace Workers, AFL-CIO, hereinafter referred to as IAM, entered into an agreement pursuant to the provisions of Public Law 914 approved January 10, 1951, as Section 2, Eleventh, of the Railway Labor Act (45 U.S.C.A., Sec. 152, Eleventh). This union shop agreement is between the railroad and substantially all of the railway labor organizations representing employees of the railroad.

Plaintiff Richard L. Gray was discharged by GM&O on November 25, 1968, from his employment as a machinist with the defendant railroad for failure to comply with the provisions of this agreement. The agreement requires all employees of the railroad in the craft or class of machinist represented by the IAM, as a condition of their continued employment, become members of the IAM within sixty (60) calendar days from the date they become employees and thereafter to maintain membership in the IAM by tendering the periodic dues, initiation fees, and assessments uniformly required as a condition of acquiring or retaining membership. Gray admittedly refused to comply with the requirements of such agreement. His refusal was based upon the grounds that to do so would violate his religious convictions. Plaintiff sues for reinstatement to his employment, for an injunction against future discharge for failure to pay dues and fees to the IAM so long as such refusal is because of religious convictions, and for damages for his discharge. His complaint is based upon the grounds that the application of the provision of the

union shop agreement to him constitutes a violation of the provisions of First, Fifth, Ninth, Tenth and Fourteenth Amendments to the United States Constitution.

The plaintiff does not ask the Court to declare Section 2, Eleventh, of the Railway Labor Act, unconstitutional. The constitutionality of the statute has been determined. *Railway Employees' Department, American Federation of Labor, et al v. Hanson, et al*, 351 U.S. 225 (1956). It is plaintiff's contention that the statute is not to be so construed or applied as to attribute to Congress an intent to authorize a contract depriving a man of employment because of his holding to his genuine and sincere religious convictions. The sincerity of plaintiff's religious faith is not in dispute.

The facts show that plaintiff was initiated into membership to Lodge 342 of the IAM located in Bloomington, Illinois, in June of 1951, and plaintiff continued to be a member in good standing in that Lodge, including the periodic payment of dues, through February 1966. On December 14, 1964, Gray became an employee of the GM&O as a machinist. Since he was already a member of Lodge 342 of the IAM, he was in compliance with the provision of the union shop agreement and continued in compliance during his period of employment with GM&O.

In January 1962, the plaintiff sought and was granted a 90 day leave of absence in order that he

might engage in work for his church organization. The plaintiff is a member of the Seventh Day Adventist Church. During his leave of absence, the plaintiff continued his membership in the IAM. Plaintiff returned to work for the railroad as machinist following the expiration of his leave and remained a member of the union until he terminated his employment with GM&O in 1966.

In February 1967, plaintiff Gray returned to the employment with the railroad and under the terms of the union shop agreement was required to comply with the terms of the agreement within sixty (60) calendar days. Plaintiff refused to do so, giving as the reasons his religious convictions. Plaintiff also refused to utilize an alternative arrangement of paying an initiation fee and regular monthly dues without becoming a member of the union. It cannot be disputed that the union and its representatives were more than liberal in attempting to secure plaintiff's membership in the IAM. However, plaintiff stood firm in his refusal, contending that he could not belong or financially support an organization which violated his religious convictions.

It is noted that plaintiff, in lieu of union dues, is willing to pay to a designated charity, money in an amount equal to the periodic union dues.

Following the prescribed and detailed procedure contained within the union shop agreement, plaintiff was notified in writing by the IAM that he was not in

compliance with the agreement and unless he did so immediately, action necessary to enforce the agreement would be taken. Plaintiff continued to refuse to join or contribute to the union organization. Shortly thereafter, disciplinal proceedings were begun and plaintiff received and exhausted all administrative remedies then available to him. He was held to be in noncompliance with the agreement at every stage of the proceedings and on or about November 25, 1968, plaintiff's employment with GM&O was terminated for failure to comply with the provisions of the union shop agreement. On December 16, 1968, this suit was filed seeking relief as more specifically set forth above.

To state in the simplest manner, the plaintiff moves this Court to hold that the application of the Railway Labor Act, Section 2, Eleventh, shall have no application to a railroad employee who feels that union membership or financial support to the union, violates his personal religious convictions. After careful examination of the latest Supreme Court interpretations of the Act, the Court finds the plaintiff's position to be untenable.

A full recitation of the Act's legislative history and purpose is not necessary. A complete legislative background is set forth in *International Machinists* v. Street, 367 U.S. 740 (1960).

It is sufficient to state that in enacting the legislation, Congress decided that public policy required the

establishment of a collective bargaining agency for the effective operation of the industry.

"Congress, acting within the constitutional powers has the final say on policy issues. If it acts unwisely, the electorate can make a change. The task of the judiciary ends once it appears that the legislative measure adopted is relevant or appropriate to the constitutional power which Congress exercises. The ingredients of industrial peace and stabilized labor-management relations are numerous and complex. They may well vary from age to age and from industry to industry. What would be needful one decade might be anathema the next. The decision rests with the policy makers, not with the judiciary." *Hanson*, supra, p. 234.

The only conditions to union membership under the Act is the periodic payment of dues, initiation fees and assessments. The purpose underlying this requirement is obvious. The cost of collective bargaining and other legitimate union activities is to be borne by the individual members who receive the benefits. Plaintiff argues that the Supreme Court in *Hanson* and *Street* decisions have "left the door open" for an exception to this blanket requirement. The Court does not so interpret the decisions.

In *Hanson*, the Court held that Congress has the authority to create and establish the collective bargaining agent and that Congress has the power to authorize the requirement of financial support by the individual members.

"We only hold that the requirement for financial support of the collective-bargaining agency by *all* who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either First or the Fifth Amendments."

Emphasis added, *Hanson*, P. 238.

In *Street*, the Supreme Court held that the union cannot expend dues of dissenting employees for political activities which the individual employee finds objectionable. The basis for the decision was that "political activities" were not included within the purposes contemplated by Congress in enacting the legislation.

The requirement of financial support for legitimate union activities remained intact. As stated by Justice Brennan, delivering the opinion of the Court:

The appellees therefore remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement. Their right of action stems not from constitutional limitations on Congress' power to authorize the union shop, but from Section 2, Eleventh, itself. In other words, appellees grievance stems from the spending of their funds for purposes not authorized by the Act in the face of their objection, not from the enforcement of union-shop agreement by the mere collection of funds. If their money were used for purposes contemplated by

Section 2 Eleventh, the appellees would have no grievance at all. Street, supra p. 771.

Justice Douglas concurring:

As long as they (union) act to promote the cause which justified bringing the group together, the individual cannot withdraw his financial support merely because he disagrees with the group's strategy. Street, supra p. 778.

Plaintiff does not contend that certain union activities are ideologically objectionable or that certain activities are "outside" Congress' contemplated purposes, but asserts that being a member of a union or financially supporting a union, in itself, is objectionable to his principles.

The expressed Congressional intent in enacting the statute was to make all who share the benefits, share the cost. See: *H. R. Rep. No. 2811, 81st Cong. 2d Sess.*, p. 4. Also, the benefits gained through the collective bargaining cannot be denied to a non-member.

"Performance of these functions (collective bargaining) entails the expenditures of considerable funds. Moreover, this Court has held that under the statutory scheme, a union's status as exclusive bargaining representative carries with it the duty fairly and equitably to represent all employees of the craft or class, union and nonunion.
Emphasis added, Street, supra p. 761.

The Seventh Day Adventist Church does not advocate that its members refrain from joining or supporting labor unions. The members, as individuals, are the sole judge for their action. A church which, as part of its religious doctrine, opposes organized labor is not before the Court, but rather a sincere individual who finds such organization in conflict with his religious conscience. To allow plaintiff, and presumably all others who share similar beliefs, to maintain their railroad employment and to make periodic payments to designated charities, contributes nothing to the support of the union representation and circumvents the intent of Congress.

Complaints similar to plaintiff's have been presented to the Courts previously, only to be denied relief. *Wicks v. Southern Pacific Company*, 231 F.2d 130 (9th C.A. 1956), cert. den. 351 U.S. 946; *Otten v. Baltimore & Ohio Railroad Company*, 205 F.2d 58 (2nd C.A. 1953); *Otten v. Staten Island Rapid Transit Railway Company*, 229 F.2d 919 (2nd C.A. 1956), cert. den. 351 U.S. 983.

Plaintiff's religious scruples are not the first which has had to yield to the general applicability of a statute. *Jacobsen v. Massachusetts*, 197 U.S. 11; *Shapiro v. Lyle*, 30 F.2d 971; *Reynolds v. U.S.*, 98 U.S. 145; and *People v. Vogelgesang*, 116 N.E. 977.

In this modern world, conflicts between individual consciences and the applicability of national legislation are abundant. Just as individual conflicts are in-

evitable, individual compromises are necessary. The union shop agreement applies to all employees and is applied in a non-discriminatory manner. All that is required of plaintiff is to contibute to the efforts of the union which procures through collective bargaining his employment benefits.

Therefore, it is ORDERED, ADJUDGED and DECREED by the Court that the defendant's motion for summary judgment should be and is hereby GRANTED.

It is further ORDERED, ADJUDGED and DECREED by the Court that the plaintiff's prayer for interim relief should be and is hereby DENIED.

It is further ORDERED, ADJUDGED and DECREED by the Court that this cause is hereby DISMISSED.

Cost to be taxed against the plaintiff.

DONE at Mobile, Alabama, this the 29th day of May 1969.

DANIEL H. THOMAS
United States District Judge

U. S. DISTRICT COURT
SOU. DIST. ALA.
FILED AND ENTERED THIS THE
29th DAY OF MAY 1969.
MINUTE ENTRY No. 25550
WILLIAM J. O'CONNOR, CLERK
BY — WILLIAM E. TAYLOR
Deputy Clerk